

August 21, 2009

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: WC Dkt. No. 04-36, CC Dkt. No. 01-92

Dear Ms. Dortch:

One Communications Corp. (“One”), by its undersigned counsel, hereby files this letter to respond to NECA’s recent *ex parte* presentations in which NECA states that One and several other carriers have been disputing the application of access charges to certain VoIP traffic terminated on the PSTN.¹

By singling out individual carriers such as One that dispute the application of access charges to the termination of VoIP traffic on the PSTN, NECA implies that those carriers are bad actors. There is no basis for this implied assertion. Carriers like One perform wholesale transmission services for VoIP providers that such providers cannot perform for themselves. This is because VoIP providers generally lack the legal right to establish efficient interconnection arrangements with incumbent LECs and because VoIP providers have in many cases been unable to justify the investment in transmission facilities required for interconnection. The services One performs for VoIP providers are valuable inputs for innovative new IP voice applications, and they permit VoIP customers to call any VoIP or

¹ See Ex Parte Presentation at 3, attached to Letter of Colin Sandy, Government Relations Counsel, NECA, to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 04-36, CC Dkt. No. 01-92 (filed Aug. 12, 2009) (“*Aug. 12 Presentation*”); Ex Parte Presentation at 3, attached to Letter of Colin Sandy, Government Relations Counsel, NECA, to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 04-36, CC Dkt. No. 01-92 (filed July 9, 2009); Ex Parte Presentation at 4, attached to Letter of Colin Sandy, Government Relations Counsel, NECA, to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 04-36, CC Dkt. No. 01-92 (filed May 14, 2009).

circuit-switched customer in the world. Moreover, as NECA admits, the FCC has not yet clarified whether access charges apply to VoIP traffic terminated on the PSTN.² In light of this legal uncertainty, it cannot be the case that carriers that transmit traffic on behalf of VoIP providers are acting illegally or improperly by refusing to pay access charges on VoIP traffic. Moreover, One has reached out to NECA and its members in good faith to try to structure a resolution to this issue.

Nevertheless, One shares NECA's concern that the lack of FCC guidance regarding the applicability of access charges to VoIP has led to costly litigation and inconsistent outcomes. The question of whether access charges apply to VoIP traffic is a matter of industry-wide concern that One Communications agrees should be addressed promptly by the FCC. Regardless of how the FCC rules, firms that provide transmission services for VoIP providers would benefit from regulatory certainty with regard to the treatment of access charges. Furthermore, as One has explained in the past, the FCC should do everything in its power to prevent the *retroactive* application of access charges to VoIP.³ Such retroactive application would only serve to increase the volume of costly and unnecessary litigation regarding termination charges applicable to VoIP.

Respectfully submitted,

/s/ Thomas Jones

Thomas Jones

Attorney for One Communications Corp.

² See e.g., *Aug. 12 Presentation* at 2 ("Commission action is needed now to provide greater regulatory certainty and incentive for investment needed to continue bringing broadband to rural consumers.").

³ See e.g., *Comments of One Communications et al.*, CC Dkt. Nos. 01-92 *et al.*, WC Dkt. Nos. 04-36 *et al.*, at 16-17 (filed Nov. 26, 2008); *Letter of Thomas Jones, Counsel, One Communications, to Marlene H. Dortch, Secretary, FCC*, CC Dkt. Nos. 01-92 *et al.*, WC Dkt. Nos. 04-36 *et al.*, (filed Oct. 28, 2008).